

## NOTICE OF CLAIM

## SUMMONS

STATE OF INDIANA  
COUNTY OF MARION, ss:

Center Township of  
Marion County Small Claims Court  
200 East Washington St., City County Bldg., Suite G-5  
Indianapolis, Indiana 46204 • Phone: (317) 327-5060

State of Indiana c/o Terry Tolliver  
302 W. Washington, IGCS 5th Fl.  
Indianapolis, IN 46204 (317) 233-3300

Plaintiff: name, address & phone number

vs. GJF Gym, Inc. and Gregory Feldman d/b/a Gold's Gym

c/o Gregory Feldman, 49 W Maryland, Circle Centre Mall  
Indianapolis, IN 46204 (317) 951-1478

Defendant: name, address & phone number

Cause No.

49K01 - 0303

-sc- 02245

Service Requested:

- ☒ Personal  
☐ Copy  
☐ Certified Mail

The said Plaintiff complains of the Defendant and says: That the Defendant is indebted to the

Plaintiff in the sum of \$ 609.00 for reasons stated herein: Breach of Contract, see  
attached Complaint

And hereby demands judgment, court costs, and all other proper relief.

Dated 3/5/03

Terry Tolliver  
Plaintiff

**TO ANY CONSTABLE OF THIS TOWNSHIP:** You are hereby commanded to summon the above defendant(s)

to appear before me in court on April 8, 2003 at 1:30 o'clock P.M.

to answer the plaintiff in a hearing on the above claim and to make due return of this Notice of Claim.

Dated \_\_\_\_\_

\_\_\_\_\_  
Judge

### CONSTABLES RETURN OF SERVICE OF NOTICE OF CLAIM

I certify that I have served this Notice of Claim on \_\_\_\_\_

- 1) By reading a Claim to the Defendant, \_\_\_\_\_
- 2) By leaving a copy of the Notice of Claim at \_\_\_\_\_ which is the dwelling place or usual place of abode of \_\_\_\_\_ and by mailing a copy of the Notice of Claim to said Defendant at the such address.
- 3) Other service remarks: \_\_\_\_\_

### NOTICE TO ALL PARTIES

- The nature of the Plaintiff's claim against you and demand made is stated above.
- You may represent yourself or hire an attorney.
- In Court on the date and time set above, you will be asked to admit or deny claim. If you deny the claim, a trial date shall be set at this admit or deny hearing.
- If the Defendant does not wish to dispute the claim of the Plaintiff, he/she may appear to agree to a judgment and for the purpose of allowing the court to establish a method by which the judgment shall be paid.
- If the Defendant cannot appear at the time and place set for the admit or deny hearing, he/she shall write the Court at the above address requesting a trial setting at a future date.
- If the Defendant fails to appear in Court at the time set for the hearing, a default judgment may be entered against the Defendant.
- The Plaintiff waives a trial by jury by filing his/her claim in the Small Claims Court.
- The Defendant waives trial by jury also unless he/she requests a jury trial within ten (10) calendar days of the receipt of the Notice of Claim. Once a request for trial by jury is granted, a transfer fee for transfer to the Superior Court must be paid within ten (10) calendar days. If the fee is not paid, waiver of jury trial occurs. Once a request is made and fee paid, request cannot be withdrawn without the consent of the other party.
- The Defendant may within ten (10) days of service of the summons file a change of venue of this matter. Proper venue is determined by the court in the following order:
  - (1) In an action upon a debt or account, venue is in the township where any defendant has consented to venue in a writing signed by the defendant.
  - (2) Venue is in the township where a transaction or occurrence giving rise to any part of the claim took place.
  - (3) Venue is in the township (in a county of the Small Claims Court) where the greater percentage of individual defendants included in the complaint resides, or, if there is no such greater percentage, the place where any individual defendant so named resides, owns real estate, or rents an apartment or real estate or where the principal office or place of business of any defendant is located.
  - (4) Venue is in the township where the claim was filed if there is no other township in the county in which the small claims court sits in which required venue lies.

Claims between landlord and tenants shall be in the township where the real estate is located.



2. Defendant, Gregory Feldman, ("Feldman") is an individual who at all relevant times was President of and has acted as an officer and agent of GJF Gym, Inc.

3. GJF was administratively dissolved by the Indiana Secretary of State on November 14, 2002.

4. When, in this Complaint, reference is made to any act of the aforementioned Defendants, whether acting individually, jointly, or severally, such allegations shall be deemed to mean that the principals, agents, or employees of the Defendants did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of said Defendants and while acting within the scope of their duties, employment, or agency.

#### **FACTS**

5. On February 5, 2002, the State of Indiana and the Defendants entered into an Assurance of Voluntary Compliance ("AVC"). A true and accurate copy of the lease is attached and incorporated herein as Exhibit "A."

6. The AVC states in relevant part, "Within 30 days after the execution of this Assurance, [GJF] agrees to pay to John Nykasa, 649 Mount Rainer, Indianapolis, Indiana, 46217, consumer [restitution] consisting of all funds paid to Gold's Gym by John Nykasa."

7. Since March 11, 2002, the Defendants have refused or otherwise failed to pay the consumer restitution as is provided in the AVC.

8. The Defendants breached their agreement with the State of Indiana and the Indiana Attorney General's Office by failing to pay the consumer restitution as required by the Assurance of Voluntary Compliance.



9. As a result of the Defendants' breach, Plaintiff has been damaged in the amount of Six Hundred and Nine Dollars (\$609.00).

**RELIEF**

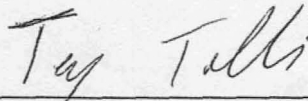
WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants for the following relief:

- a. Consumer restitution in the amount of Six Hundred and Nine Dollars (\$609.00), payable to the Office of the Attorney General, for John Nykasa of Indianapolis, Indiana; and
- b. All other just and proper relief.

Respectfully submitted,

Steve Carter  
Indiana Attorney General  
Atty. No. 4150-64

By:



Terry Tolliver  
Deputy Attorney General  
Atty. No. 22556-49

Office of Attorney General  
Indiana Government Center South  
302 W. Washington Street, 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 233-3300

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF MARION     )

IN THE MARION CIRCUIT COURT  
  
AVC NO.       02-003

GJF GYM, INCORPORATED       )  
D/B/A GOLD'S GYM            )  
DOWNTOWN INDIANAPOLIS     )  
AND                                )  
D/B/A GOLD'S GYM OF         )  
GREENWOOD                    )

**FILED**

FEB 05 2002

*Joseph M. Taylor*  
CLERK OF THE  
MARION CIRCUIT COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Roy P. Coffey, and the Respondent, GJF GYM, Incorporated, d/b/a Gold's Gym of Indianapolis and Gold's Gym Greenwood enters into an Assurance of Voluntary Compliance (Assurance), pursuant to Indiana Code §24-5-0.5-7.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. Respondent has mailing addresses and does business in Marion County, Indiana at 51 North Illinois, Indianapolis, Indiana and in Johnson County at 1211 N. Madison Avenue, Greenwood, Indiana, and has engaged in consumer transactions with Indiana consumers.
2. Respondent acknowledges and admits its responsibility and liability for acts, practices, and methods employed by its partners, employees, agents, and representatives within the scope of their employment in the solicitation and/or sale of health spa service contracts.



3. Respondent agrees, pursuant to Indiana Code § 24-5-7-5, that every Indiana health spa service contract it furnishes to buyers shall contain a notice of the buyer's cancellation rights in ten point boldface writing, and a copy shall be furnished to the buyer at the time the contract is formed.

4. Respondent agrees multiple notices of cancellation shall be consistent and shall comply with Indiana Code § 24-5-7-5.

5. Respondent agrees, pursuant to Indiana Code § 24-5-7-5 that every Indiana health spa services contract it furnishes to buyers will advise the buyer of the buyer's right to cancel the contract by providing written notice, in any form, delivered in person or mailed by certified or registered mail to the seller before midnight of the third full business day after the buyer signs the contract.

6. Respondent agrees, pursuant to Indiana Code § 24-5-7-5, that every Indiana health spa services contract it furnishes to buyers will advise the buyer that the buyer must provide all membership cards previously delivered to the buyer if the buyer wishes to cancel the health spa contract within the buyer's three day right of rescission.

7. Respondent agrees, pursuant to Indiana Code § 24-5-7-5, that every Indiana health spa services contract it furnishes to buyers will advise the buyer in at least ten (10) point boldface type that all money paid under a contract canceled within the buyer's three day cancellation period shall be refunded within thirty (30) days of receipt of the notice of cancellation.

8. Respondent agrees, pursuant to Indiana Code § 24-5-7-5, all money paid under a contract shall be refunded within thirty (30) days of receipt of the notice of cancellation.



9. Respondent agrees, pursuant to Indiana Code § 24-5-7-6, every Indiana health spa service contract that has not been canceled by section 5 of the Indiana Health Spa Services Act (paragraphs 3-5 of this Assurance) shall contain a provision in at least ten (10) point boldface type that the buyer or the buyer's estate may cancel the contract if any of the following occur:

- a. The buyer dies
- b. The buyer becomes totally physically disabled for the duration of the contract.
- c. The health spa facility operated by the seller is moved to a location that is more than five (5) miles away from the original facility. However, if a health spa facility is closed at any site and facility with similarly health spa services is operated less than five (5) miles away from the closed facility, then the buyer's contract may be transferred to the operating facility, if the operator of the facility to which the contract is to be transferred accepts the transfer.
- d. The services are not longer available as provided in the contract because of the seller's permanent discontinuance of operation.

10. Respondent agrees, pursuant to Indiana Code § 24-5-7-7, that when a buyer is required by Respondent to submit to a physical examination to verify total physical disability, the physician shall be acceptable to the buyer and the cost of the examination shall be borne by the health spa.

11. Respondent agrees, pursuant to Indiana Code § 24-5-7-8(a), every Indiana health spa service contract it furnishes to buyers will advise the buyer that, in a cancellation under section 6 of the Indiana Health Spa Services Act (paragraph 7 of this Assurance), the seller may retain the portion of the total price representing the services used or completed plus reimbursement for expenses incurred in an amount not to exceed twenty-five percent (25%) of the total contract price. In no instance may the seller demand more than the full contract price from the buyer.

12. Respondent agrees that every Indiana health spa services contract it furnishes to buyers in which the buyer has executed any credit or loan agreement will advise the buyer in at least ten (10) point boldface type of the seller's duty to cancel and return the credit or loan agreement within (30) days after proper cancellation of the contract.

13. Respondent agrees that every Indiana health spa services contract it furnishes to buyers will not state in any manner that the health spa service contract or payments may not ever be suspended or canceled.

14. Respondent agrees that every Indiana health spa services contract it furnishes to buyers will not state in any manner that money paid by consumer will not ever be refunded.

15. Respondent or any of its agents, in soliciting and/or contracting consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Health Spa Services Act, Indiana Code § 24-5-7-1 et seq.

16. Respondent, in soliciting and /or contracting with consumers, agrees to comply in all aspects with the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 et seq.

17. Respondent agrees to cancel the health spa service contract and issue a prorated refund based on actual use of the health spa to any buyer who files a complaint with the Consumer Protection Division of the Indiana Attorney General's Office in which the health spa service contract between Respondent and the consumer contains any violations of the Indiana Health Spa Services Act.



18. Upon execution of this Assurance, Respondent shall pay consumer restitution in the amount of Seven Hundred Ninety Two and 00/100 Dollars (\$792.00) to the Office of the Attorney General on behalf of James Cushing,

19. Within 30 days after the execution of this Assurance, Respondent agrees to pay to John Nykasa, consumer consisting of all funds paid to Gold's Gym by John Nykasa.

20. Respondent agrees that the running of all applicable statutes of limitation shall be tolled through March 25, 2001.

21. Respondent agrees to fully cooperate with the Office of the Attorney General in the resolution of any future complaints received by the Consumer Protection Division.

22. This Assurance does not constitute an approval by the Attorney General of any of Respondent's past or future business practices, and Respondent shall not make any representations to the contrary.

23. This Assurance of Voluntary Compliance is to be filed by the Office of the Attorney General with the Circuit Court of Marion County.

The parties have executed this Assurance this 5<sup>th</sup> day of February, 2002.

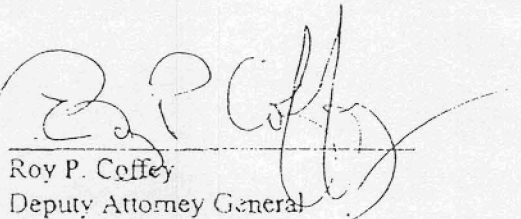
STATE OF INDIANA

RESPONDENT

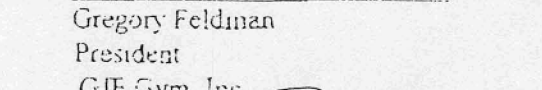
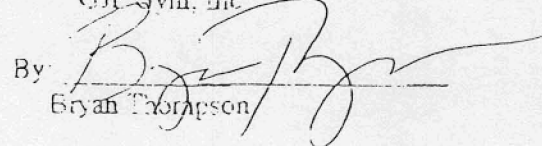
STEVE CARTER  
Attorney General of Indiana

GJF, Inc.  
d/b/a GOLD'S GYM DOWNTOWN  
INDIANAPOLIS and  
GOLD'S GYM GREENWOOD

By:

  
Roy P. Coffey  
Deputy Attorney General  
Atty No. 0003930-29  
Indiana Government Center South, 5<sup>th</sup> floor  
402 W. Washington  
Indianapolis, IN 46204  
Telephone: (317) 232-6229

By:

  
Gregory Feldman  
President  
GJF Gym, Inc.  
By:   
Bryan Thompson

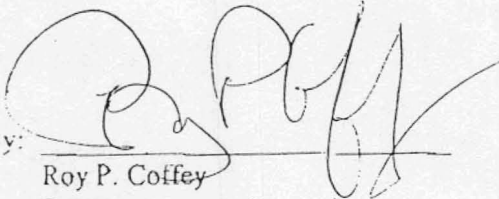
APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Judge, Marion Circuit Court

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STATE OF INDIANA

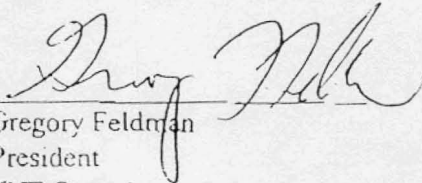
STEVE CARTER  
Attorney General of Indiana

By: 

Roy P. Coffey  
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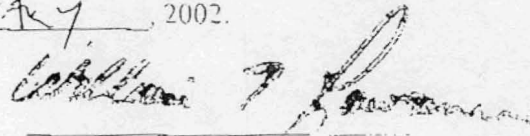
RESPONDENT

GJF, Inc.  
d/b/a GOLD'S GYM DOWNTOWN  
INDIANAPOLIS and  
GOLD'S GYM GREENWOOD

By:   
Gregory Feldman  
President  
GJF Gym. Inc.

By: \_\_\_\_\_  
Bryan Thompson

APPROVED this 25 day of January, 2002.

  
Judge, Marion Circuit Court